

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MARK CURTIS FERNANDEZ,

CV. 09-467-HU

Petitioner,

ORDER

v.

RICK COURSEY,

Respondent.

MARSH, Judge

Magistrate Dennis J. Hubel issued a Findings and Recommendation (#39) on March 1, 2011. The Magistrate Judge recommended that Petitioner's Amended Petition for Writ of Habeas Corpus (#28) should be denied on the basis that it is untimely.

Petitioner has filed timely objections through his counsel (#41), essentially renewing arguments presented in his briefing to Judge Hubel. When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(B); McDonnell Douglas Corp. v.

Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

The court has given the file of this case a *de novo* review, and has also carefully evaluated the Magistrate Judge's Findings and Recommendation, petitioner's objections, and the record of the case. The Findings and Recommendation is well-reasoned, without error, and adopted in its entirety.

CONCLUSION

The Magistrate Judge's Findings and Recommendation (#39) in this action is ADOPTED. Petitioner's Amended Petition for Writ of Habeas Corpus (#28) is DISMISSED, for lack of jurisdiction. This court also adopts the Magistrate Judge's recommendation to decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 19__ day of APRIL, 2011.

___/s/ Malcolm F. Marsh_____
Malcolm F. Marsh
United States District Judge